

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL H. SUSSMAN, BENNETT WEISS,
MAURY KNIGHT and DEMOCRATIC
ALLIANCE OF ORANGE COUNTY,

Plaintiffs,

-VS-

GARRISON COMMANDER, WEST POINT,
and UNITED STATES MILITARY ACADEMY
AT WEST POINT,

Defendants.
-----X

AFFIDAVIT N SUPPORT OF APPLICATION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

STATE OF NEW YORK }
 }
COUNTY OF ORANGE }

MICHAEL H. SUSSMAN, having been duly sworn, deposes and states:

1. I am one of the plaintiffs in this action. I am submitting this affidavit in support of plaintiffs' request for a temporary restraining order and preliminary injunction. While I am a member of the bar of this Honorable Court, I make this application in my capacity as a citizen exercising my First Amendment rights.

2. In November 2002, I convened the Orange County Democratic Alliance in substantial measure to organize protests against the war in Iraq and the erosion of civil liberties being perpetrated by the Bush Administration.

3. In May 2004, and each May thereafter, I have organized protests against administrative spokesmen who have attended the West Point graduation and defended the American invasion of Iraq at that forum. Prior speakers have included the President of the United States, the Vice President and former Secretary of Defense Donald Rumsfeld. On each prior occasion, approximately 1,000 citizens have staged a non-violent march to the gates of West Point and held a rally thereafter at Veterans Memorial Park in the Village

of Highland Falls, approximately three quarters of a mile from Thayer Gate, one of the entrances to West Point.

4. In each proceeding graduation and again this year, graduating cadets and their parents enter West Point at the Stoney Lonesome Gate which is several miles northwest of the Thayer Gate at the opposite end of the campus. They then proceed to the main football field which is likewise across campus, though further east from the Stoney Lonesome Gate.

5. In early April 2007, I learned that Vice President Cheney was to be the featured speaker at the 2007 commencement. I organized a meeting in mid-April at which members of the Democratic Alliance and other anti-war activists from the Mid-Hudson Valley agreed to send exhibit 1 to the Staff Adjutant, the Provost Marshall and the Garrison Commander, seeking leave to engage in a non-violent protest on the West Point Military Reservation.

6. We proposed to enter the Thayer Gate to proceed west encircling a large field which plays no role whatsoever in graduation exercises, and then to proceed back out of Thayer Gate. While this course would bring us into no contact with the cadets and their families and others attending the graduation, it would allow us to make use of the West Point protest policy (Exhibit 2) and express our views at the same time and in the same place as the Vice President. I estimate that the marchers will be approximately one quarter to one half mile from the graduates and Vice President Cheney.

7. All prior demonstrations I have organized have been entirely peaceful and our organization and contributing groups share a philosophy of non-violence which we expect to fully adhere to regardless of provocation.

8. To this date, I have conferred with the police chief for the Village of Highland Falls, Peter Miller, and he has informed me that the Village continues to have no permit requirement for our march. I advised Chief Miller of the approximate number of persons I expect to attend -- 1,000 -- and as on prior occasions he agreed graciously to provide

necessary police escort and protection. I note parenthetically that Chief Miller called me before I was able to contact him to advise him of our planned march and rally.

9. On the contrary, despite my timely letter, which complies in all regards with USMA policy, to date I have received no response from any the addressees. To properly plan and coordinate our march and rally, we obviously need some advance notice of West Point's response. Moreover, in light of the legal issues implicated it is at least arguable that West Point is delaying its response to insulate our denial from legal challenge and make any challenge untimely.

10. In the view of those organizing the rally, exercising our First Amendment right at West Point is a critical value. We have watched civilian leadership repeatedly use the facility for justification of its foreign policy. Meanwhile, the government claims that West Point is beyond politics and that the military is neutral. We believe the policy promulgated in May 2004 contemplates and permits peaceful protest and that our plan implicates no safety and security issues which could reasonably be cited to deny our request.


11. We are irreparably harmed without judicial relief in light of the primacy of the First Amendment. Silence by West Point decisionmakers, which is tantamount to denial of our request, will irreparably harm our right of expression and speech. While it is true that our demonstration may continue outside the gates of West Point, we believe that our expression gains greater significance and meaning if we hold the march within the grounds of West Point. We cannot wait for West Point to take any additional time to respond to my request, as practically speaking that would make our appeal of any denial impracticable.

12. This application for a TRO seeks the following relief: ordering the defendants to promptly issue a permit allowing the protest as described above.

13. No prior request for this relief has been made.

14. As the Democratic Alliance is a non-incorporated entity, I am requesting that this court waive any bond on this application.

Dated: May 11, 2007



MICHAEL H. SUSSMAN

SIGNED TO ME BEFORE THIS 11TH DAY
OF MAY, 2007



NOTARY PUBLIC

STEPHEN BERGSTEIN
Notary Public, State of New York
No. 02BE6029204
Qualified in Ulster County
Commission Expires August 9, 2009

EXHIBIT 1



P.O. Box 1005 - Goshen, New York 10924
Tel: 845-294-3991 • Fax: (845) 294-1623

EXECUTIVE BOARD

TOM BREGMAN, Cornwall
DAWN HULSE-SIERRA, Greenville
PAUL JAQUITH, Goshen
BETH LAW, Wawayanda
MARGUERITA PELLOTT, Woodbury
MICHAEL SUSSMAN, Chester

April 16, 2007 - By fax and regular mail

Staff Judge Advocate
Provost Marshall
Department of the Army
United States Military Academy
West Point, New York 10996-5000

re: May 26, 2007 - Request for Leave to Stage Protest

Dear Gentlemen:

On behalf of the Orange County Democratic Alliance, this is to respectfully request written permission to stage a peaceful protest on West Point Reservation Property commencing at 9:00 a.m. on May 26, 2007.

Under USMA Regulation 27-2, we are specifically requesting written permission on behalf of the Democratic Alliance, c/o Michael H. Sussman, Esq., Convener, 40 Park Place, Goshen, New York 10924 (845)-294-3991 to stage a non-violent protest march on the grounds of West Point.. The purpose of our event is to demonstrate against the continued the American invasion of Iraq on May 26, 2007, the same date and time Vice President Cheney shall address graduating cadets. We expect about 1000 people to attend this event. These participants shall gather off-base, at Veterans' Memorial Park in the Village of Highland Falls, New York at 8:30 a.m. The assem-bled shall then march up to and through Thayer Gate onto the West Point Reservation, past the Hotel Thayer and around the large field which lies in front of that hotel. The protestors will then march back through the gates and off campus. We expect those attending to arrange buses, car pools and private transportation and to park off, not on, the reservation. We expect to be on the West Point reservation for no longer than one hour, during the afore-described march. We will provide security through designated marshals trained in crowd control and non-violent demon-stration tactics. We do not expect to need sanitary services of related ancillary services as all those marching will attend to such needs before entering the base. Nor do we expect to rally on the base, but, as explained, to stage this orderly march

Please provide me with your written permission to engage in this march as soon as is possible.

In light of the use by Mr. Cheney of your facility the same day for political speech, I would

strongly suggest that we be treated in like manner and be permitted to exercise the rights of citizenship, that is to protest this administration's policies in a peaceful manner. I do not believe this proposed action shall interfere, in any way, with the graduation ceremony which will be proceeding on the other end of the large campus. Should you need any additional information, kindly contact me at your early convenience.

Yours sincerely,



Michael H. Sussman

Convener, Orange County Democratic Alliance [non-partisan organization which is not affiliated with any political party]

cc: Garrison Commander

EXHIBIT 2

Department of the Army
United States Military Academy
West Point, New York 10996-5000
1 May 2004

USMA Reg 27-2

5 May 2004

PROTESTS, PICKETING, AND OTHER SIMILAR DEMONSTRATIONS

MAJA

FOR THE SUPERINTENDENT:

OFFICIAL:
GREGORY J. DYSON
COL, FA
Chief of Staff

\ Original Signed \
MICHAEL C. MILLER
MAJ, AG
Adjutant General

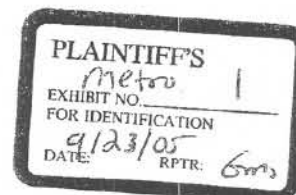
DISTRIBUTION:
A - E Electronic

Summary: This regulation establishes policies and procedures for protests, picketing, political speech and other similar demonstrations on the West Point Military Reservation (WPMR).

Applicability: This regulation applies to the West Point Military Reservation.

TABLE OF CONTENTS

- 1-1. Purpose, p. 1
- 1-2. Policy, p. 1
- 1-3. Violations, p. 2



1-1. PURPOSE: This regulation establishes policies, responsibilities, and procedures for protests, picketing, political speeches and other similar demonstrations on the West Point Military Reservation (WPMR). To maintain law and order and protect the installation and the activities thereon, the Garrison Commander may take such actions as are reasonably necessary and lawful, including ejection from, or denial of access to, the installation of those who threaten a civil disturbance upon or directed against the installation and its activities.

1-2. POLICY:

a. It is West Point Military Reservation policy that:

(1) The Garrison Commander shall safeguard the security of the installation.

(2) Cadet and servicemembers' rights of expression should be preserved to the maximum extent possible, consistent with good order and discipline and the national security.

(3) The Garrison Commander should respond to conduct that could harm the effectiveness of the mission or operations at West Point Military Reservation.

b. The West Point Military Reservation is a non-public forum and is open to the public only under certain limited circumstances. The West Point Military Reservation is a military installation under the exclusive, concurrent, and proprietary federal jurisdiction at which official business of the federal government is conducted, including military training, and other official business.

c. On the West Point Military Reservation:

(1) It is unlawful for any person to engage in activities that promote supremacist or extremist causes and rallies.

(2) It is prohibited for any person to attempt to create illegal discrimination based on race, creed, color, sex, religion, or national origin; or otherwise engage in efforts to deprive individuals of their civil rights.

d. Except for activities authorized under Title 5 United States Code Chapter 71, Labor Management Relations, on the West Point Military Reservation it is unlawful for any person to engage in any public protests, picketing or any other similar demonstration without the prior approval of the Garrison Commander. Therefore, unless prior approval has been obtained as outlined in paragraph 1-2(g) below, it will be unlawful for any person on the West Point Military Reservation to:

(1) Display symbols and other printed materials likely to arouse anger, alarm, or resentment.

(2) Engage in protests, public speeches, marches, sit-ins, political displays, or demonstrations.

(3) Interrupt or disturb any activity or event, including but not limited to: meals, training, formations, ceremonies, parades, reviews, classes, courts-martial, hearings, athletic contests, clinics or camps, Graduation, performances, competitions, speeches or other military business.

(4) Obstruct movement on any street, road, sidewalk, pathway, or other vehicle or pedestrian thoroughfare.

(5) Utter to any person abusive, profane, indecent, or otherwise provocative language that by its very utterance tends to excite a breach of the peace.

(6) Distribute or post publications, including pamphlets, newspapers, magazines, handbills, flyers, leaflets, and other printed materials, except through regularly established and approved distribution outlets and places.

(7) Circulate petitions or engage in picketing or similar demonstrations for any purpose.

(8) Engage in partisan political campaigning or electioneering.

(9) Disobey a request from government law enforcement or security officials (e.g., Federal, State, or local law enforcement officials), military police, or other competent authority to cease an unlawful activity, disperse, move along or leave the installation.

c. Minor and inconsequential public displays that do not coerce, present a hazard, or cause interference may be permissible so long as they do not disrupt the normal functioning of the West Point Military Reservation (e.g., wearing a political button or displaying a bumper sticker on an automobile).

f. In appropriate cases, the Garrison Commander of the WPMR may give express written permission for demonstrations or activity on the West Point Military Reservation property outside the gates adjacent to the installation borders, only if the procedures outlined below are followed.

g. Any person or persons desiring to protest, picket, or engage in any other similar demonstrations on the WPMR must submit a written request through the Provost Marshal and Staff Judge Advocate to the Garrison Commander, U.S. Military Academy. The request must be received at least 30 calendar days prior to the proposed demonstration or activity, and it must include the following:

(1) Name, address, and telephone number of the sponsoring person or organization. (If the requestor is an organization, include the name of the point of contact.)

(2) Purpose of the event.

(3) Number of people expected to attend.

(4) Proposed date, time, location and duration of the event.

(5) Proposed means of transportation to and from WPMR.

(6) Proposed means of providing security, sanitary services and related ancillary services to the participants.

h. Based on the Commander's concerns for discipline, mission accomplishment, protection of property, and the safeguarding of the health, morale, and welfare of the WPMR community, the Commander will determine whether to grant the request and, if granted, any limitations as to where and when it will take place.

1-3. VIOLATIONS:

a. A person is in violation if that person enters upon or remains upon the West Point Military Reservation for the purpose of engaging in any activity prohibited or limited by this regulation, when that person is not authorized by the Garrison Commander pursuant to the provisions above.

b. All persons may be prosecuted for violating the provisions of this regulation under 18 USC 1382. Military personnel may be prosecuted under the Uniform Code of Military Justice. Department of the Army civilian employees may be prosecuted and/or disciplined under appropriate regulations.

c. Administrative sanctions may include, but are not limited to bar actions including suspension of access privileges, or permanent exclusion from the West Point Military Reservation.